November 8, 2006

David Karsann
Idaho Transportation Department
600 W. Prairie Ave
Coeur d'Alene, ID 83815

RE: Preliminary Draft 401 Certification of Sand Creek Byway Project

Dear Mr. Karsann,

We have reviewed this application to discharge fill material into 5.53 acres of open water and wetlands adjacent to Sand Creek in a backwater area of Pend Oreille Lake. The purpose of the fill is to construct two bridges, a bicycle/pedestrian pathway, a buttress fill to support a new section of highway, bank stabilization, temporary construction access, temporary cofferdams, fence post footings, two water intakes, storm water outlets and three habitat enhancement structures. Additionally, dredging of sediment from Sand Creek is proposed to realign the stream low flow channel and to replace streambed sediments with suitable construction materials. The quantities of dredge and fill are provided in the attached Tables 1 and 2.

This project is extremely complex, involving a considerable number of technical experts in various fields of study. Some of these fields of study relate to water quality in that they evaluate the feasibility of this project or describe how to successfully execute the project. It is not our intent to critique the conclusions of these expert opinions and studies. We have been given assurances by these experts and ITD in numerous meetings and in various documents that our concerns with hydrocarbon contamination, mass failures, slumping/lifting and execution of the project both in Sand Creek and above it, have been addressed. Given this, the certification focuses on meeting water quality standards during and after construction by utilizing best management practices, as reflected in our certification conditions.

Recently, DEQ received one request from the public to provide a preliminary draft certification. This preliminary draft certification process allows the public to examine this draft document and provide written comments to DEQ for a 30 day period of time. At the end of this comment period, DEQ considers the comments and provides our final certification decision. DEQ requested a time extension from the Army Corps of

Engineers to accommodate this process. DEQ anticipates a final certification decision no later than December 22, 2006.

Under Section 401 of the Federal Clean Water Act, federal agencies issuing discharge permits must be provided a notice of certification from the State of Idaho that the project will meet state water quality standards. By copy of this letter, the Army Corps of Engineers is being notified of our preliminary draft certification decision and conditions.

The following conditions shall be applied to the Army Corps of Engineers Permit for the project:

1. If there is a spill or release of a hazardous material, the State Communications Center shall be contacted immediately at 1-800-632-8000. All contractors shall have ready access to the State Communications Center number.

2. Each field supervisor of every contractor working on-site shall read this certification.

3. Hazardous and deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of state waters unless adequate measures and controls are provided to insure that those material will not enter state waters as result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third party activities.

4. Work below the ordinary high water mark (2062.5') or adjacent wetlands shall be done at low flow. This does not include areas isolated from surface water using cofferdams.

5. This certification does not authorize return flows from a mechanical water treatment system unless authorized by a NPDES discharge permit.

6. This certification does not authorize discharges to waters of the state for purposes of trench, foundation or cofferdam de-watering (with the below exceptions). These waters are typically highly turbid and can include added pollutants such as cement, oils, grease and drilling mud.

7. The initial dewatering within a newly formed cofferdam is acceptable if there are no compounds added to the water and it meets water quality standards. Provisions shall be made to protect the bed and banks from scour when dewatering.

8. Dewatering of inflatable cofferdams into waters of the state is acceptable. Provisions shall be made to protect the bed and banks from scour when dewatering. Water quality standards shall be met during dewatering.

9. Water-filled cofferdams shall be reliable and function correctly. Their design and materials must have been previously and scientifically field tested to determine effectiveness in water quality protection. Manufacturers specifications and deployment instructions shall be followed. If there is flowing water, dams must have been designed, tested and recommended by the manufacturer for this condition. Preference shall be given to dams with double reinforced seams. Water-filled cofferdams shall function in such a manner as to meet Idaho Water Quality Standards.

10. Due to hydrocarbon contamination of sediment, dewatering of dredged material shall be accomplished without a discharge to waters of the state.

11. Turbidity shall be measured if a visible plume of sediment can be seen in Sand Creek resulting from this project.

12. Turbidity in the plume shall not exceed background turbidity by more than 50 NTU instantaneously or more than 25 NTU for more than 10 consecutive days and shall be measured immediately adjacent to the work. Background turbidity shall be sampled immediately upstream of the project but above any disturbance created by the project. One background measurement shall be taken for each sampling event.

13. Monitoring data shall be legibly recorded in an organized fashion such that location of sample, turbidity data presented in nephelometric units, time of collection and cause of turbidity is clearly indicated.

14. If turbidity standards are exceeded, immediate steps shall be taken to reduce turbidity to below the standard. These steps shall use knowledgeable and reasonable effort, using a higher level of knowledgeable and reasonable effort at each instance water quality standards are exceeded. This iterative process insures that best management practices that are not working are replaced or enhanced by more effective measures. These steps shall be legibly recorded in an organized fashion.

15. No soil binder or mulch shall be placed near or below the ordinary high water mark.

16. Silt fences shall be placed well above the ordinary high water mark and outside of wetland boundaries unless fill is being added to the water body. The purpose of silt fence is to keep sediment from entering the water body or wetland, not to temporarily

trap it in one area of the water body or wetland only to be suspended when the water level rises. Additionally, the trenching in of silt fences on the lake or stream bed also creates disturbance that we want to minimize as much as possible.

17. Disturbed sediment below the ordinary high water mark shall be compacted to the pre-disturbance condition immediately after the completion of that project activity or prior to anticipated inundation due to weather or dam operations.

18. Equipment travel on the lakebed and stream bed shall be minimized as much as possible. Travel routes shall be visibly marked so equipment operators can see them while driving their equipment.

19. Silt curtains shall be reliable and function correctly. Curtain design and materials must have been previously and scientifically field tested to determine effectiveness in water quality protection. Manufacturers specifications and deployment instructions shall be followed. If there is flowing water, curtains must have been designed, tested and recommended by the manufacturer for this condition. Curtains that drag back and forth along the bottom of the lake, stream or river due to wave action are incorrectly installed and shall be considered a violation of this certification, unless a manufacturer who has scientifically field tested this design recommends this type of placement. The silt curtain shall function in such a manner as to meet Idaho Water Quality Standards.

20. Silt curtains shall be deployed so as to minimize the area within the curtain while still maintaining optimum function.

21. Monitoring of turbidity using a portable turbidimeter shall occur when turbid water is observed outside of a silt curtain. Monitoring of silt curtains shall follow the above described process for turbidity in Sand Creek.

22. Placement of portable toilets shall not be in the vicinity of any water body. The distance shall be such that if tipped over, the discharge should not be able to reach a water body or wetland. A barrier of straw bales could also be constructed to provide secondary containment if this distance can't be achieved due to site restrictions.

23. The contractors shall be notified of and be prepared for the continually changing water levels of Sand Creek and Pend Oreille Lake. Winter and spring months commonly see water levels fluctuate as a result of rain on snow events or rapid snow melt. Best management practices shall be designed to function effectively with this changing water level.

24. If dredging of sediments in Sand Creek results in a release of petroleum contamination or other hazardous or deleterious material to waters of the state, the dredging shall immediately halt and a plan of action submitted to DEQ for approval prior to resuming work.

If construction is completed in accordance with the described work plan and above conditions, DEQ certifies under Section 401 that this construction will comply with applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and will not violate Idaho Water Quality Standards.

Any modification or amendment to the project, which DEQ expects will result in additional impacts to water quality, shall require a new 401 water quality certification from DEQ before any construction activities affected by the modification or amendment may proceed.

All construction activities authorized under the referenced permit shall cease for failure of the applicant to comply with the conditions of this certification and shall not resume until the applicant demonstrates to the satisfaction of DEQ compliance with all the conditions of this certification.

This §401 Water Quality Certification may be appealed pursuant to the Environmental Protection and Health Act, Idaho Code 39-107(5), the Idaho Administrative Procedure Act and the rules of Administrative Procedure before the Board of Environmental Quality, IDAPA 58.01.23. Such an appeal is a prerequisite to any district court action and must be initiated by filing a petition for a contested case in accordance with the Rules of Administrative Procedure before the Board of Environmental Quality (IDAPA 58.01.23) within thirty-five days of the date of this 401 certification.

This certification does not constitute authorization of the permitted activities by any other local, state or federal agency or private person or entity. This certification does not excuse the permit holder from any obligation that may exist to obtain any other necessary approvals, authorizations or permits, including without limitation, any approval, if one is required, from the owner of a water conveyance system to use the system in connection with the permitted activities.

Sincerely,

Gwen P. Fransen, Regional Administrator
Coeur d=Alene Regional Office

attachment

cc:

Barbara Benge - Army Corps of Engineers, Walla Walla
Jim Brady - Idaho Department of Lands, Sandpoint
Mary Terra-Berns, Idaho Fish and Game
John Olson - U.S. Environmental Protection Agency, Boise
Nicholle Rowell - Army Corps of Engineers, Boise
North Idaho Community Action Network

Table 1. Proposed Dredging of Sediments (yd^3)*

Purpose of Dredging	Quantity To Be Dredged	Disposal Location Off-Site Uplands	Discharge of Dredged Material Into Waters of the State
Channel creation	2,230	2,230	0
Bank stabilization and benching	5,555	5,555	0
Bridge pier	1,922	1,922	0
Lightweight fill installation	680	680	0
Irrigation pumps	43	0	43
Storm water pond outlets	105	105	0
Cultural Resources	6,500	0	6,500
Fence in wetland	No estimate	-	-
TOTALS	17,035	10,492	6,543

*For purposes of this project "sediments" will be any material excavated below 2062.5' or from a Corps jurisdictional wetland.

Table 2. Proposed Discharge of Imported Fill Material Below 2062.5' Elevation (yd^3)

Purpose of Fill	Quantity of Fill	Permanent Fill	Temporary Fill
Bank Stabilization	785	riprap	
Bank Stabilization and benching	5,555	Granular fill	
Fill placed to access buttress fill	8,945		Washed rock 4-6" diameter
Fill placed to construct bridges	4,000		Washed rock 4-6" diameter
Bridge pier	1,922	Concrete and steel piles	
Lightweight fill	680	Cellular concrete	
Storm water pond outlets	105	riprap	
Buttress fill	57,000	Granular fill	
TOTAL	78,992	66,047	12,945

GRAND TOTALS **Dredging: All Types** **17,035 yd^3**

Filling: All Types **85,535 yd^3** (78,992 + 6,543)